

In the Court of Judge, Co-operative Court Thane at Thane
(Presided over by Smt. B. P. Jadhav, Judge)

Dispute No. CCT 53/2023
CNR No. MHCO04-000051-2023

Ambhe Bhumi CHS Ltd.

Disputant

V/S

Mr. Sandeep Patil

Opponent

Order below application Exh. 5
(Declared on 13/11/2024)

1. The disputants have filed this dispute for recovery and orders against the opponent on the basis of several allegations and averments made in the dispute and prayed as per prayer clause 19(a) to (d).

Along with the dispute the disputants have also filed an interim application at Exh. 5 praying therein that

(a) the opponent be directed to make payment of 50% amount of Rs. 2,10,877/- to the disputant society.

(b) the opponent their servants, agent or any other person claiming through or under them be restrained from creating third party interest in respect of the suit shop during pendency of the dispute.

2. It is the case of the disputants that the disputant is a Co-operative Housing Society registered under the provisions of Maharashtra Co-operative Societies Act 1960. The opponent is the member of the disputant society in respect of flat No. A-201.

3. It is contended that the opponent is enjoying the common facilities and amenities of the society; therefore opponent is liable to pay the society maintenance charges and other charges as fixed by the society in its special general body meeting and annual general body meeting from time to time.

4. It is contended that the society has maintained the book of accounts as per the provisions of approved bye-laws. As per the books of accounts maintained by the society, opponents are liable to

pay disputant an amount of Rs. 2,10,877/- towards society charges together with interest at the rate of 21% p.a. till realization of entire amount. The other members of the society are paying society charges regularly, but opponents are not paying the maintenance charges regularly.

5. It is contended that inspite of repeated demands and oral requests, the opponents, failed to make payment to society.

6. It is contended that it is apprehension that the opponent may create third party interest in respect of the suit shop. If the opponent succeed in creating third party interest in respect of the suit property, in that event there will be multiplicity of proceedings and complications in the matter will be increased. Hence disputants constrained to file the dispute alongwith the present interim application Exh.5.

7. In response to the suit summons, the opponent appeared in the present dispute but failed to filed his written statement. Hence "No written statement" order is passed against opponent on 04/10/2023.

8. Considering pleadings and perusing the documents on record following points arise for my consideration.

Sr. No.	Points	Findings
1	Whether the disputant is entitled for the relief as claimed in this application ?	Partly in the affirmative
2	What order ?	As per final order

REASONING

AS TO POINT NO. 1 AND 2

9. In the context of this application, I also heard argument of the learned advocate for the disputant.

10. After careful perusal of the entire proceedings and documents produced on record, it is an admitted fact that the opponent is a member of disputant society. Disputant is a Co-

operative Housing Society registered as per the provisions of MCS Act 1960 and rules framed thereunder. It is an admitted fact that the opponent is a owner of flat No. A-201. It is also an admitted fact that the opponent is enjoying the facilities and amenities given by the disputant society.

11. It is seen from the copy of ledger that some of amount of maintenance is not paid by the opponent and some of the amount is paid by the opponent. Admittedly there is dispute in respect of interest and some maintenance amount. To decide the controversy evidence of both the parties needs to be recorded which cannot be possible at the interim stage.

12. So far as the apprehension of the disputant society that the opponent may alienate or transfer the shop to third person and create third party interest in disputed shop is concerned, I am of the view that if opponent is restrained from creating third party interest, no prejudice as such would be caused to him and interest of both the parties would be protected. Hence interim application needs to be partly allowed. Accordingly I answer point No. 1 as partly in the affirmative.

AS TO POINT NO. 2

13. For the reasons recorded in context of point No.1 I answer point No. 2 as per order below. Hence I proceed to pass the following order.

Order

1. Application at Exh. 5 is partly allowed.
2. The opponent is hereby restrained from creating any third party interest in respect of the suit flat till the disposal of this dispute.

Place : Thane
Date : 13/11/ 2024

Sd/-
(Smt. B. P. Jadhav)
Judge
Co-operative Court, Thane